

Docket No.: 1451-007B

PATENT

#4
C. S. W.
3/12/97
61001 U.S. PTO
08/967826
11/12/97

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Kenneth J. McNAUGHT et al. :
Rule 60 Divisional of :
Serial No. 08/374,645 : Group Art Unit:
Filed: November 12, 1997 : Examiner:
For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

INFORMATION DISCLOSURE STATEMENT

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

In accordance with the provisions of 37 C.F.R. 1.56, 1.97 and 1.98, the attention of the Patent and Trademark Office is hereby directed to the documents listed on the attached form PTO-1449. It is respectfully requested that the documents be expressly considered during the prosecution of this application, and that the documents be made of record therein and appear among the "References Cited" on any patent to issue therefrom.


This Information Disclosure Statement is being filed within three months of the U.S. filing date OR before the mailing date of a first Office Action on the merits. No certification or fee is required.

Rule 60 Divisional of
Serial No. 08/374,645

The references were cited by or submitted to the U.S. Patent and Trademark Office in parent application Serial No. 08/74,645, filed April 27, 1995, which is relied upon for an earlier filing date under 35 USC 120. Thus, copies of these references are not attached. 37 CFR 1.98(d).

Respectfully submitted,

LOWE, PRICE, LEE LANC & BECKER



Michael G. Gilman
Registration No. 19,114

99 Canal Center Plaza, Suite 300
Alexandria, Virginia 22314
(703) 684-1111 MGG:amz
Date: November 12, 1997
Facsimile: 703-684-1124

SHEET 1 OF 1

[illegible]

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

4 to 10 months' avail.

Docket No.: 1451-007B

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Kenneth J. McNAUGHT et al. :
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Serial No. 08/374,645 : Group Art Unit:
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For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

TRANSMITTAL OF FORMAL DRAWINGS

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

At the time the above application was filed, informal
drawings were presented with the application.

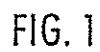
The formal drawings are submitted herewith.

Respectfully submitted,

LOWE, PRICE, LEBLANC & BECKER

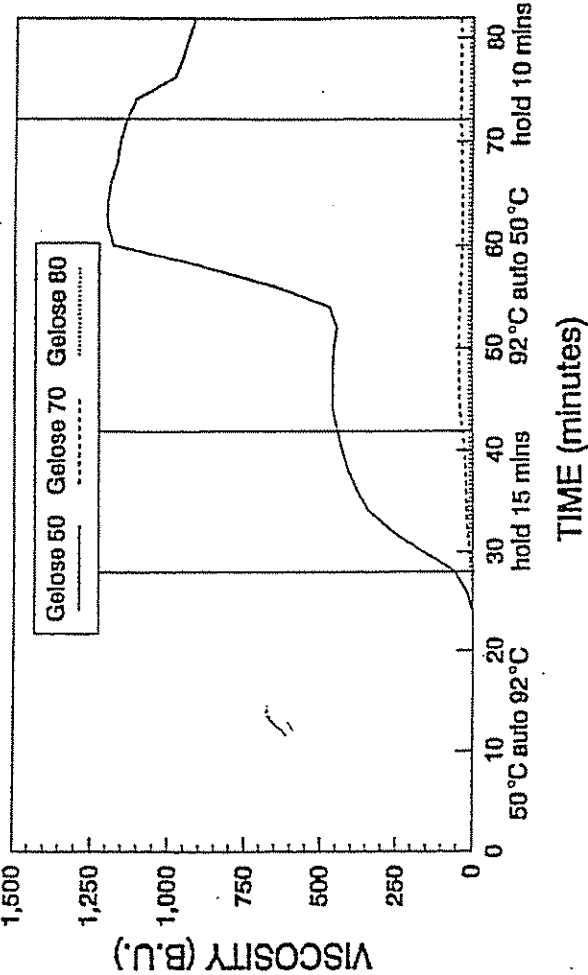
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262777 92829680

GELOSE VISCOGRAPHS
IN WATER

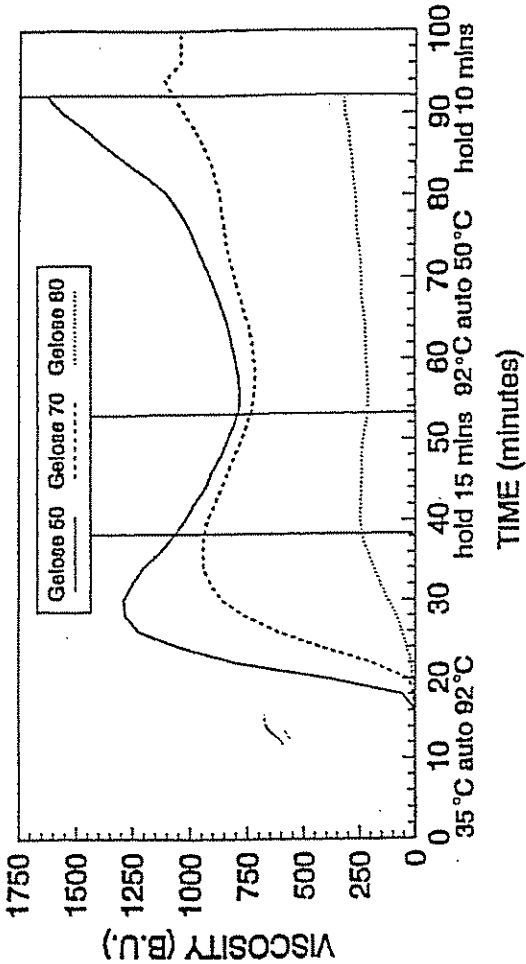


VISCOGRAPH PROGRAMME
8% dsb in water; 250 cmg; plns; 50 °C auto 92 °C
hold 15 mins auto 50 °C hold 10 mins

FIG. 2

462111-92849680

GELOSE COMPARISONS
IN BASE



VISCOGRAPH PROGRAMME:
6% dsb in 0.1M Sodium Hydroxide (NaOH); 250 cmg;
pins; 36°C auto 92°C hold 15 mins auto 35°C

FIG. 3

Total Dietary Fibre Content of High Amylose Maize Starch Fractions
High Amylose 80 (10/91)

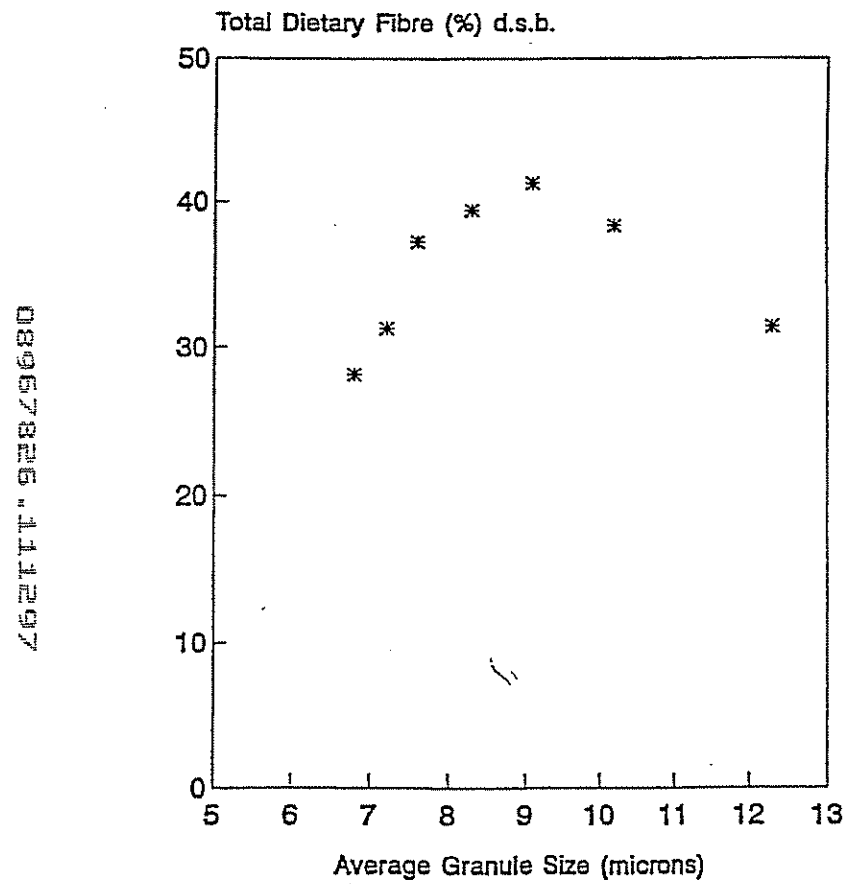


FIG. 4



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
|-----------------|-------------|----------------------|---------------------|

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|------------------------------|--------------------------------|--------------------------------|
| Office Action Summary | Application No. 08/967,826 | Applicant(s) McNaught et al |
| | Examiner David M. Brunsmann | Group Art Unit 1108 |

☒ Responsive to communication(s) filed on 12 Nov 1997

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 9-11, 13-15, 24, and 25 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 9-11, 13-15, 24, and 25 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Serial Number: 08967826

Page 2

Art Unit: 1108

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 24, 9, 10, 11, 25, 13, 14 and 15 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-8, respectively, of prior U.S. Patent No. 5,714,600. This is a double patenting rejection.

The patented claims are identical to those pending in the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is (703) 308-3454. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays from 6:30 am to 5:00 pm eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached on (703) 308-3823. The fax phone number for this Group is (703) 305-3599.

Serial Number: 08967826

Page 3


Art Unit: 1108

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [mark.bell@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

DMBrunsman
April 10, 1998



David M. Brunzman
Primary Examiner
Group 1755

FORM PTO 948 (REV. 01-97)

U.S. DEPARTMENT OF COMMERCE-Patent and Trademark Office

Application No. 967, 826NOTICE OF DRAFTERPERSON'S
PATENT DRAWING REVIEWThe drawing filed (insert date) 11-12-97 are:A. not objected to by the Drafterperson under 37 CFR 1.84 or 1.152.B. ✓ objected to by the Drafterperson under 37 CFR 1.84 or 1.152 as indicated below. The Examiner will require submission of new, corrected drawings when necessary. Corrected drawings must be submitted according to the instructions on the back of this notice.

- | | |
|---|---|
| <p>1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink. Color. _____ Color drawing are not acceptable until petition is granted. Fig(s) _____ _____ Pencil and non black ink is not permitted. Fig(s) _____</p> <p>2. PHOTOGRAPHS. 37 CFR 1.84(b) _____ Photographs are not acceptable until petition is granted. _____ 3 full-tone cuts are required. Fig(s) _____ _____ Photographs not properly mounted (must be on board or photographic double-weight paper). Fig(s) _____ _____ Poor quality (half-tone). Fig(s) _____</p> <p>3. TYPE OF PAPER. 37 CFR 1.84(c) _____ Paper not flexible, strong, white and durable. Fig(s) _____ _____ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not acceptable. <u>two sheets</u> <u>AI</u> _____ Mylar, vellum paper is not acceptable (too thin). Fig(s) _____</p> <p>4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes: _____ 21.0 cm by 29.7 cm (DIN size A4) _____ 21.6 cm by 27.9 cm (8 1/2 x 11 inches) _____ All drawings sheets not the same size. Sheet(s) _____</p> <p>5. MARGINS. 37 CFR 1.84(g): Acceptable margins: Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm SIZE: A4 Size Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm SIZE: 8 1/2 x 11 _____ Margins not acceptable. Fig(s) _____ _____ Top (T) _____ Left (L) _____ Right (R) _____ Bottom (B)</p> <p>6. VIEWS. 37 CFR 1.84(h) REMINER: Specification may require revision to correspond to drawing changes. _____ Views connected by projection lines or lead lines. Fig(s) _____ Partial views. 37 CFR 1.84(h)(2) _____ Brackets needed to show figure as one entity. Fig(s) _____ _____ Views not labeled separately or properly. Fig(s) _____ _____ Enlarged view not labeled separately or properly. Fig(s) _____</p> | <p>7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3) _____ Hatching not indicated for sectional portions of an object. Fig(s) _____ _____ Sectional designation should be noted with Arabic or Roman numerals. Fig(s) _____</p> <p>8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i) _____ Views do not appear on a horizontal, left-to-right section. Each page is either upright or turned, so that the top becomes the right side, except for graphs. Fig(s) <u>2, 3</u> _____ Views not on the same plane on drawing sheet. Fig(s) _____</p> <p>9. SCALE. 37 CFR 1.84(j) _____ Scale not large enough to show mechanism with crowding when drawing is reduced in size to two-thirds in reproduction. Fig(s) _____</p> <p>10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(l) _____ Lines, numbers & letters not uniformly thick and well defined, clean, durable and black (poor line quality). Fig(s) <u>AI</u></p> <p>11. SHADING. 37 CFR 1.84(m) _____ Solid black areas pale. Fig(s) _____ _____ Solid black shading not permitted. Fig(s) _____ _____ Shade lines, pale, rough and blurred. Fig(s) _____</p> <p>12. NUMBERS, LETTERS, & REFERENCE CHARACTERS. 37 CFR 1.84(n) _____ Numbers and reference characters not plain and legible. Fig(s) <u>AI</u> _____ Figure legends are poor. Fig(s) <u>AI</u> _____ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(3) Fig(s) _____ _____ English alphabet not used. 37 CFR 1.84(p)(3) Fig(s) _____ _____ Numbers, letters and reference characters must be at least 32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3) Fig(s) <u>AI</u></p> <p>13. LEAD LINES. 37 CFR 1.84(q) _____ Lead lines cross each other. Fig(s) _____ _____ Lead lines missing. Fig(s) _____</p> <p>14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(t) _____ Sheets not numbered consecutively, and in Arabic numerals beginning with number 1. Fig(s) _____</p> <p>15. NUMBERING OF VIEWS. 37 CFR 1.84(u) _____ Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s) _____</p> <p>16. CORRECTIONS. 37 CFR 1.84(w) _____ Corrections not made from PTO-948 dated _____</p> <p>17. DESIGN DRAWINGS. 37 CFR 1.152 _____ Surface shading shown not appropriate. Fig(s) _____ _____ Solid black shading not used for color contrast. Fig(s) _____</p> |
|---|---|

COMMENTS

Remove AI descriptive information

REVIEWER

Gray

DATE

3-10-98

TELEPHONE NO.

ATTACHMENT TO PAPER NO.

6

PTO COPY

Docket No.: 50179-026 (1451-007BY)

#7
O'Quinn
Pat 1/98
PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Kenneth J. McNAUGHT et al.

Serial No. 08/967,826 ✓

Group Art Unit: 1302

Filed: November 12, 1997 ✓

Examiner:

For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS ✓

REQUEST FOR INTERFERENCE

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

Pursuant to 37 CFR 1.607, Applicants hereby request that an interference be declared between this application and U.S. Patent No. 5,300,145.

U.S. Patent No. 5,300,145, issued April 5, 1994, on an application filed by Ferguson et al as Serial No. 937,794 with a filing date of August 28, 1992.

Proposed Count

A proposed Count for the interference would read as follows:

A substantially pure starch extracted from a plant source having an amylose extender genotype, the starch comprising at least 75% amylose determined by butanol fractionation/exclusion chromatography measurement,

or

Serial No. 08/374,645

A maize starch selected from the group consisting of maize starch having an amylose content of more than 80%, physically or chemically modified derivatives of maize starch having an amylose content of more than 80%, destructurized maize starch having an amylose content of more than 80%, and non-destructurized maize starch having an amylose content of more than 80%.

This proposed Count covers the subject matter of claim 6 of U.S. Patent No. 5,300,145 or claim 24 of this application Serial No. 08/967,826. It will be understood that both claims are directed to a starch extracted from a plant such as maize which contains a substantial amount of amylose, and thus cover the same subject matter.

Claims 1-20 of U.S. Patent No. 5,300,145 are considered to correspond to the proposed Count. Claims 9-11, 13-15, 24 and 25 of this application are considered to correspond to the proposed Count.

This application is a division under 37 CFR 1.60 of prior pending allowed application Serial No. 08/374,645, filed April 27, 1995 which latter application is a Section 371 of PCT/AU93/00389, filed July 30, 1993. The PCT application claims priority to Australian Application No. PL3894, filed July 31, 1992 and application Serial No. PL7266, filed February 12, 1993 in Australia. The Australian application PL3894, filed July 31, 1992, antedates the August 28, 1992 filing date of U.S. Patent No. 5,300,145.

The claims in this application are entitled to the filing date of the original PCT application filed July 30, 1993 and the priority applications filed in Australia on July 31, 1992 and February 12, 1993. Main claim 24 is based on original claim 8 and defines the same invention as claimed

Serial No. 08/374,645

in original claim 8. The other claims are also entitled to the original PCT filing date and the priority Australian applications, and thus antedate the filing date of U.S. Patent No. 5,300,145.

The Examiner should note that claims 9-11, 13-16, 24 and 25 of this application were previously allowed in Applicants' parent application Serial No. 08/374,645, filed April 27, 1995. Those claims, however are being canceled from the parent application which is issuing to patent with claims directed to a different invention. Since these claims were allowed in Applicants' parent application, it is submitted that all claims in this application are allowable and declaration of the interference is therefore in order.

With respect to 35 USC 135(b), Applicants have been continuously claiming the interfering subject matter since the PCT application was filed July 30, 1993. Since the PCT application designated the United States, the effective filing date of application Serial No. 08/374,645 which entered the National Phase on April 27, 1995 is entitled to the U.S. filing date of July 30, 1993. Accordingly, the subject matter has been continuously claimed since the issuance of U.S. Patent 5,300,145.

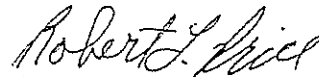
With respect to 37 CFR 1.608, since Applicants are entitled to the filing date of the original Australian Application No. PL3894, filed July 31, 1992, for the claims which correspond to the proposed Count, then this application should be accorded the benefit of the parent PCT application and the Australian priority applications. Accordingly, this application should be the senior party in the interference and such action is requested. For the Examiner's convenience, copies of the Australian priority applications are enclosed with this request.

Serial No. 08/374,645

It is believed that this request complies with all the requirements of 37 CFR 1.607 and 1.608 and declaration of the interference is now requested.

Respectfully submitted,

LOWE, PRICE, LEBLANC & BECKER

A handwritten signature in cursive script, appearing to read "Robert L. Price".

Robert L. Price
Registration No. 22,685

99 Canal Center Plaza, Suite 300
Alexandria, Virginia 22314
(703) 684-1111 RLP:ajb
Date: March 31, 1998
Facsimile: 703-684-1124

copy original filed
3/31/98

Docket No.: 50179-026 (1451-007B)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Kenneth J. McNAUGHT et al. :
Serial No. 08/967,826 : Group Art Unit: 1302
Filed: November 12, 1997 : Examiner:
For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS :

REQUEST FOR INTERFERENCE

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

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U.S. Patent No. 5,300,145, issued April 5, 1994, on an application filed by Ferguson et al as Serial No. 937,794 with a filing date of August 28, 1992.

Proposed Count

A proposed Count for the interference would read as follows:

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or

Serial No. 08/374,645

A maize starch selected from the group consisting of maize starch having an amylose content of more than 80%, physically or chemically modified derivatives of maize starch having an amylose content of more than 80%, destructured maize starch having an amylose content of more than 80%, and non-destructured maize starch having an amylose content of more than 80%.

This proposed Count covers the subject matter of claim 6 of U.S. Patent No. 5,300,145 or claim 24 of this application Serial No. 08/967,826. It will be understood that both claims are directed to a starch extracted from a plant such as maize which contains a substantial amount of amylose, and thus cover the same subject matter.

Claims 1-20 of U.S. Patent No. 5,300,145 are considered to correspond to the proposed Count. Claims 9-11, 13-15, 24 and 25 of this application are considered to correspond to the proposed Count.

This application is a division under 37 CFR 1.60 of prior pending allowed application Serial No. 08/374,645, filed April 27, 1995 which latter application is a Section 371 of PCT/AU93/00389, filed July 30, 1993. The PCT application claims priority to Australian Application No. PL3894, filed July 31, 1992 and application Serial No. PL7266, filed February 12, 1993 in Australia. The Australian application PL3894, filed July 31, 1992, antedates the August 28, 1992 filing date of U.S. Patent No. 5,300,145.

The claims in this application are entitled to the filing date of the original PCT application filed July 30, 1993 and the priority applications filed in Australia on July 31, 1992 and February 12, 1993. Main claim 24 is based on original claim 8 and defines the same invention as claimed

Serial No. 08/374,645

in original claim 8. The other claims are also entitled to the original PCT filing date and the priority Australian applications, and thus antedate the filing date of U.S. Patent No. 5,300,145.

The Examiner should note that claims 9-11, 13-16, 24 and 25 of this application were previously allowed in Applicants' parent application Serial No. 08/374,645, filed April 27, 1995. Those claims, however are being canceled from the parent application which is issuing to patent with claims directed to a different invention. Since these claims were allowed in Applicants' parent application, it is submitted that all claims in this application are allowable and declaration of the interference is therefore in order.

With respect to 35 USC 135(b), Applicants have been continuously claiming the interfering subject matter since the PCT application was filed July 30, 1993. Since the PCT application designated the United States, the effective filing date of application Serial No. 08/374,645 which entered the National Phase on April 27, 1995 is entitled to the U.S. filing date of July 30, 1993. Accordingly, the subject matter has been continuously claimed since the issuance of U.S. Patent 5,300,145.

With respect to 37 CFR 1.608, since Applicants are entitled to the filing date of the original Australian Application No. PL3894, filed July 31, 1992, for the claims which correspond to the proposed Count, then this application should be accorded the benefit of the parent PCT application and the Australian priority applications. Accordingly, this application should be the senior party in the interference and such action is requested. For the Examiner's convenience, copies of the Australian priority applications are enclosed with this request.

Serial No. 08/374,645

It is believed that this request complies with all the requirements of 37 CFR 1.607 and 1.608 and declaration of the interference is now requested.

Respectfully submitted,

LOWE, PRICE, LEBLANC & BECKER

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Robert L. Price
Registration No. 22,685

99 Canal Center Plaza, Suite 300
Alexandria, Virginia 22314
(703) 684-1111 RLP:ajb
Date: March 31, 1998
Facsimile: 703-684-1124

Docket No.: 1451-007B (50179-026)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Kenneth J. McNAUGHT et al.

Serial No. 08/967,826 : Group Art Unit: 1302
Filed: November 12, 1997 : Examiner: D. Brunzman
For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

RESPONSE TO OFFICIAL ACTION

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

This is in response to the Official Action dated April 13, 1998 in this application. In the Official Action, the Examiner rejected the claims of the application under 35 USC § 101 as claiming the same invention as claimed in Applicants' prior U.S. Patent No. 5,714,600. Reconsideration of this rejection is requested.

For the Examiner's information, the Applicants' prior Patent No. 5,714,600 issued February 3, 1998. However, the patent issued without entry of an Amendment which had been submitted in the pending application, which Amendment was to cancel the claims which correspond to claims 1-8 in the patent. Unfortunately, however, the Amendment failed to reach the file of the patent prior to

Serial No. 08/967,826

publication. The Patent and Trademark Office recognized the mistake and promptly requested Applicants to submit a Certificate of Correction to cancel the claims which correspond to claims 1-8 of the patent. This request for Certificate of Correction was submitted March 12, 1998 and Applicants are awaiting approval of the Certificate of Correction to delete claims 1-8 from the issued U.S. Patent 5,714,600. With deletion of those claims from the patent, the double patenting rejection should be overcome.

In addition, on March 31, 1998, Applicants filed a Request for Interference in this application Serial No. 08/967,826. This Request for Interference obviously crossed in the mail with this Official Action. For the Examiner's information, enclosed is an additional copy of this Request for Interference.

As the Examiner may note from the Request for Interference, Applicants request that an interference be declared between this application and U.S. Patent No. 5,300,145. It is believed that the Request for Interference meets all the requirements of 37 CFR § 1.607 and declaration of the interference should be in order.

Since the claims of Applicants' prior patent are being cancelled by Certificate of Correction, the double patenting objection should be overcome so that these claims should be allowable and the interference can proceed.

Serial No. 08/967,826

It is believed that the above represents a complete response
to the Official Action and reconsideration is requested.

Respectfully submitted,

McDERMOTT, WILL & EMERY



Robert L. Price

Registration No. 22,685

99 Canal Center Plaza, Suite 300
Alexandria, Virginia 22314
(703) 518-5100 RLP:ajb
Date: May 26, 1998
Facsimile: 703-684-1124



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
|-----------------|-------------|----------------------|---------------------|

1061/0714 10/11/04 1061/0714

LONG BRUCE EDWARD & BECK
100 CANAL STREET PLAZA
SUITE 2000
BALTIMORE MD 21201

1061/0714

EXAMINER

BRUCE L. BECK

ART UNIT PAPER NUMBER

1061

DATE MAILED: 07/11/04

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|------------------------------|--------------------------------------|---------------------------------------|
| Office Action Summary | Application No. 08/967,826 | Applicant(s) McNaught et al |
| | Examiner David M. Brunzman | Group Art Unit 1755 |

☒ Responsive to communication(s) filed on 26 May 1998

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 9-11, 13-15, 24, and 25 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 9, 11, 13, 15, 24, and 25 is/are rejected.

☒ Claim(s) 10 and 14 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Serial Number: 08/967826

Page 2

Art Unit: 1108

ANY Claims 1~~0~~ and 1^M5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

ANY Claims 1~~0~~ and 1^H9 are allowable over the prior art of record and will be subject to analysis for interference proceedings pending disposition of the remaining claims.

"HIGH-AMYLOSE CORN STARCH: ITS PRODUCTION, PROPERTIES, AND USES", R.F. Senti, Chapter XXI of Starch Chemistry and Technology, Whistler, R.L. and Paschall, E.F. is representative of the large body of prior art teaching starch having up to 85% apparent amylose.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 9, 25, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Senti.

Much of the prior art relies on amylose determination based on iodine affinity such as colorimetric, as in the instant application, or potentiometric. The prior art measures this "apparent" amylose by iodine affinity also. Interpreting the claims in light of the specification, the instant claims must be read as "...maize starch having an amylose content of more than 80%, as

Serial Number: 08/967826

Page 3

Art Unit: 1108

measured by colorimetric iodine analysis..." Senti teaches maize starch containing 85% amylose as measured by colorimetric iodine affinity analysis and gel composition made therewith.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 of this title before the invention thereof by the applicant for patent.

Claims 11 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by US 5,300,145.

The reference includes low amylopectin starches containing up to 99% amylose and "low molecular weight amylose." The basis in the instant application for the limitation at least 94.8% amylose is not found in priority application PL 3894.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is (703) 308-3454. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays from 6:30 am to 5:00 pm eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached on (703) 308-3823. The fax phone number for this Group is (703) 305-3599.

Serial Number: 08/967826

Page 4

Art Unit: 1108

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [mark.bell@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

DMBrunsman
July 13, 1998



David M. Brunsman
Primary Examiner
Group 1755

| | | | | | |
|-----------------------------------|---|---|------|---------------------------------------|-------------|
| Notice of References Cited | | Application No. 08/967,826 | | Applicant(s) McNaught et al | |
| | | Examiner David M. Brunsman | | Group Art Unit 1755 | Page 1 of 1 |
| U.S. PATENT DOCUMENTS | | | | | |
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| NON-PATENT DOCUMENTS | | | | | |
| | | DOCUMENT (Including Author, Title, Source, and Pertinent Pages) | | | DATE |
| | U | Senti, "High-Amylose Corn Starch: Its production, properties and use" * | | | 1987 |
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* no month available

Docket No.: 50179-026 (1451-007B)

12/C
9/23/98
18
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Kenneth J. McNAUGHT et al. :
Serial No. 08/967,826 : Group Art Unit: 1755
Filed: November 12, 1997 : Examiner: D. Brunzman
For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

RESPONSE TO OFFICIAL ACTION

Honorable Assistant Commissioner
for Patents and Trademarks
Washington, D. C. 20231

Sir:

This is in response to the Official Action dated July 14,
1998, in this application.

Please amend the application as follows:

IN THE CLAIMS:

Please cancel claims 9, 10, 13 and 14 from the application.

Please amend claims 11 and 15 to read as follows:

11
21 (Amended) A maize starch as in claim [10] *24* having an
apparent amylose content of 95.7% [94.8%] or more.

Serial No. 08/967,826

C2 5 15. (Amended) A composition as in claim [14] ~~25~~ wherein the maize starch has an apparent amylose content of 95.7% [94.8%] or more.

Please amend claims 24 and 25 to read as follows:

C3 24. (Amended) A maize starch selected from the group consisting of maize starch having an apparent amylose content of more than 90.1% [80%], physically or chemically modified derivatives of maize starch having an apparent amylose content of more than 90.1% [80%], deconstructurized maize starch having an apparent amylose content of more than 90.1% [80%], and non-deconstructurized maize starch having an apparent amylose content of more than 90.1% [80%].

25. (Amended) A composition comprising a maize starch selected from the group consisting of maize starch having an apparent amylose content of more than 90.1% [80%], physically or chemically modified derivatives of maize starch having an apparent amylose content of more than 90.1% [80%], deconstructurized maize starch having an apparent amylose content of more than 80%, and non-deconstructurized maize starch having an apparent amylose content of more than 90.1% [80%].

Serial No. 08/967,826

Please add the following new claim:

26. A maize starch as in claim 1 having an apparent amylose content of 93.0%.

REMARKS

The Official Action of July 14, 1998 has been carefully considered. Accordingly, the amendments to the claims of this application, taken with the following remarks, are believed sufficient to place the application in condition for allowance. By this Amendment, claims 9, 10, 13 and 14 are cancelled, and independent claims 24 and 25 have been revised to indicate that the maize starch has an apparent amylose content of more than 90.1% with support from original claim 10 and in the application at page 9, lines 31-33. A minimum 90.1% value is also found in Australian priority application No. PL3894, at page 7, line 15. In addition, claims 11 and 15 have been amended to recite an apparent amylose content of 95.7% rather than 94.8%. Support for this value may be found in the table on page 9 of the specification and in the same table on page 10 of the Australian application PL3894. In addition, specific claim 26 has been added to cover a specific starches described in these tables of an apparent amylose content of 93.0%. Support for the term "apparent" amylose content may be found at page 5, line 1, and elsewhere in the disclosure.

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Therefore, since all the amendments are fully supported by the specification, entry is requested.

In the Official Action, claims 11 and 15 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. It is believed that the Examiner intended that this objection pertain to claims 10 and 14 because claims 11 and 15 are rejected on page 3 of the Action, as anticipated by U.S. Patent No. 5,300,145 on the ground that support for the limitation of 94.8% is not found in priority application PL3894. Claims 10 and 14 have been cancelled and the 90.1% limitation has been inserted into independent claims 24 and 25 to make those claims allowable.

In addition, claims 11 and 15, which were rejected as anticipated by U.S. Patent No. 5,300,145 have been amended to recite that the amylose content is 95.7% rather than 94.8%. Support for the value of 95.7% is found in the table on page 9 of the specification and in the corresponding table in Australian priority application No. PL3894.

Broad claims 24, 9, 25 and 13 were rejected under 35 U.S.C. §102(b) as anticipated by the reference to Senti. The Examiner did not provide a copy of the reference but indicated that it was representative of a large body of prior art teaching starch having up to 85% apparent amylose. In order to avoid this reference, Applicants have amended the main claims in this application to

Serial No. 08/967,826

indicate that the minimum starch amylose content in the starch is 90.1% as in original claim 10 and 14, which are believed free of the art. Therefore, it is believed that the enclosed amendments and above remarks are sufficient to place all claims in this application in condition for allowance.

Since the claims are believed to be in condition for allowance, Applicants hereby renew the Request for Interference as originally filed May 26, 1998. As pointed out in that prior request, Applicants request that an interference be declared between this application and U.S. Patent No. 5,300,145 which has a filing date of August 28, 1992. This application is a division of prior pending allowed application Serial No. 08/374,645, filed April 27, 1995, which latter application is a section 371 application of PCT/AU93/00389 filed July 30, 1993. The PCT application claims priority to Australian application No. PL3894 filed July 31, 1992 and Serial No. PL7266 filed February 12, 1993 in Australia. It is submitted that Applicants are entitled to the benefit of the filing date of Australian priority application No. PL3894 filed July 31, 1992, for all pending claims which filing date antedates the filing date of U.S. Patent No. 5,300,145. Accordingly, in any interference, Applicants should be indicated as the senior party. It is therefore requested that an interference be declared with the following proposed count:

Serial No. 08/967,826

Proposed Count

A substantially pure starch extracted from a plant source having an amylose extender genotype, the starch comprising at least 75% amylose determined by butanol fractionation/exclusion chromatography measurement,

or

a maize starch selected from the group consisting of maize starch having an apparent amylose content of more than 90.1%, physically or chemically modified derivatives of maize starch having an apparent amylose content of more than 90.1%, destructurezied maize starch having an apparent amylose content of more than 90.1%, and non-structurezied maize starch having an apparent amylose content of more than 90.1%.

This proposed count covers the subject matter of claim 6 of U.S. Patent 5,300,145 or claim 24 of this application. Claims 1-20 of U.S. Patent 5,300,145 are considered to correspond to the proposed count. Claims 11, 15 and 24-26 of this application are considered to correspond to the proposed count.

It is believed that all claims in the application are in now in condition for allowance and declaration of an interference is in order. Accordingly, allowance and declaration of the interference are requested.

Respectfully submitted,

McDERMOTT, WILL & EMERY



Robert L. Price
Registration No. 22,685

99 Canal Center Plaza, Suite 300
Alexandria, Virginia 22314
(202) 756-8600 RLP:brca
Date: September 22, 1998
Facsimile: 202-756-8699



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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01/10/04 10/07/05 [REDACTED]

UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
300 NORTH CAPITOL STREET
ALEXANDRIA, VA 22304

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 10/07/05

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Application/Control Number: 08967826

Page 2

Art Unit: 1755


All claims are allowable. However, due to a potential interference, *ex parte* prosecution is SUSPENDED pending determination of the propriety of declaring an interference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunzman whose telephone number is (703) 308-3454. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays from 6:30 am to 5:00 pm eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached on (703) 308-3823. The fax phone number for this Group is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

DMBrunzman
October 26, 1998


David M. Brunzman
Primary Examiner
Group 1755



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Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

CHANGE OF ADDRESS/POWER OF ATTORNEY

LOCATION 17X1 SERIAL NUMBER 08967826 PATENT NUMBER

#12
D.B.
5-14-99

THE CORRESPONDENCE ADDRESS HAS BEEN CHANGED TO CUSTOMER # 20277

THE PRACTITIONERS OF RECORD HAVE BEEN CHANGED TO CUSTOMER # 20277

THE FEE ADDRESS HAS BEEN CHANGED TO CUSTOMER # 20277

ON 02/11/99 THE ADDRESS OF RECORD FOR CUSTOMER NUMBER 20277 IS:

MCDERMOTT WILL & EMERY
600 13 STREET N W
WASHINGTON DC 20005

AND THE PRACTITIONERS OF RECORD FOR CUSTOMER NUMBER 20277 ARE:

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|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 15497 | 22685 | 23687 | 26106 | 26151 | 26527 | 28149 | 28363 | 28553 | 28562 |
| 29017 | 30020 | 30589 | 32029 | 33351 | 33424 | 33965 | 34035 | 34111 | 34523 |
| 35894 | 36139 | 36190 | 36324 | 36801 | 36976 | 37136 | 37182 | 37578 | 37777 |
| 39397 | 39552 | 39929 | 40289 | 40358 | 41367 | 41428 | | | |

PTO INSTRUCTIONS: PLEASE TAKE THE FOLLOWING ACTION WHEN THE CORRESPONDENCE ADDRESS HAS BEEN CHANGED TO CUSTOMER NUMBER: RECORD, ON THE NEXT AVAILABLE CONTENTS LINE OF THE FILE JACKET, 'ADDRESS CHANGE TO CUSTOMER NUMBER'. LINE THROUGH THE OLD ADDRESS ON THE FILE JACKET LABEL AND ENTER ONLY THE 'CUSTOMER NUMBER' AS THE NEW ADDRESS. FILE THIS LETTER IN THE FILE JACKET. WHEN ABOVE CHANGES ARE ONLY TO FEE ADDRESS AND/OR PRACTITIONERS OF RECORD, FILE LETTER IN THE FILE JACKET.

Docket No.: 50179-026

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1755

In re Application of

Kenneth J. McNAUGHT et al

Serial No.: 08/967,826

Filed: November 12, 1997

For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS



Group Art Unit: 1302

Examiner: D. Brunsman

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

CORRESPONDENCE ADDRESS CHANGE

Sir:

Please change the records to indicate the current firm name and telephone number for the above-identified application and forward all future correspondence as follows:

McDERMOTT, WILL & EMERY
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Respectfully submitted,

McDERMOTT, WILL & EMERY

Robert L. Price

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Date: January 24, 2000
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 08/967,826 | 11/12/97 | MCAUGHT | 1451-007E |

MCDERMOTT WILL & EMERY
600 13TH STREET N.W.
WASHINGTON DC 20005

IM52/1009

EXAMINER

BRUNSMAN, D

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 10/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | | |
|------------------------------|------------------|-----------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 08/967,826 | MCNAUGHT ET AL. | |
| | Examiner | Art Unit | |
| | David M Brunsman | 1755 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 22 September 1998.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 11, 15 and 24-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 11, 15 and 24-26 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☒ Certified copies of the priority documents have been received in Application No. 08/374,645.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Application/Control Number: 08/967,826

Page 2

Art Unit: 1755

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 24 and 25 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 3 and 7 of prior U.S. Patent No. 5714600. This is a double patenting rejection. The terms "amylose content" as recited in the patent and "apparent amylose content" as recited in the instant application are defined alike.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11, 15 and 26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4, 7, and 8 of U.S. Patent No. 5714600. Although the conflicting claims are not identical, they are not patentably distinct from each other because the ranges claimed overlap with that of the patent. As admitted in the instant

Application/Control Number: 08/967,826
Art Unit: 1755

Page 3

specification, it has been desired in the art to maximize amylose content. It would have been obvious to one of ordinary skill in the art to select amylose contents greater than 93% or greater than 95.7% for that reason. The particular ranges are explicitly disclosed in the patent examples, see page 5, lines 10-20.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M Brunzman whose telephone number is 703-308-3454. The examiner can normally be reached on M, Tu, Th, F (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 703-308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9049 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

David M Brunzman
Primary Examiner
Art Unit 1755

DMB
October 8, 2001



| | | | |
|-----------------------------------|---------------------------------------|--|-------------|
| Notice of References Cited | Application/Control No. 08/957,826 | Applicant(s)/Patent Under Reexamination MCNAUGHT ET AL | |
| | Examiner David M Brunsman | Art Unit 1755 | Page 1 of 1 |

U.S. PATENT DOCUMENTS

| * A | Document Number Country Code-Number-Kind Code | Date MM-YYYY | Name | Classification | |
|-----|--|-----------------|----------------|----------------|-----|
| A | US-5714600 | 02-1998 | McNaught et al | 536 | 102 |
| B | US- | | | | |
| C | US- | | | | |
| D | US- | | | | |
| E | US- | | | | |
| F | US- | | | | |
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| L | US- | | | | |
| M | US- | | | | |

FOREIGN PATENT DOCUMENTS

| * N | Document Number Country Code-Number-Kind Code | Date MM-YYYY | Country | Name | Classification | |
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NON-PATENT DOCUMENTS

| * U | Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages) | | | | |
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| W | | | | | |
| X | | | | | |

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office
PTO-892 (Rev. 01-2001)

Notice of References Cited

Part of Paper No. 13



Docket No.: 50179-026

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Kenneth J. MCNAUGHT, et al.

Serial No.: 08/967,826

Group Art Unit: 1302

Filed: November 12, 1997

Examiner: D. Brunsman

For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

PETITION FOR EXTENSION OF TIME

Commissioner for Patents
Washington, DC 20231

Sir:

It is respectfully requested that the time for response to the Office Action dated October 9, 2001, now due to expire January 9, 2002, be extended for one month(s) and set to expire on February 9, 2002.

Please charge the extension fee of \$110.00 to Deposit Account No. 500417. Please charge any additional fees or credit any overpayment to Deposit Account No. 500417.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

Robert L. Price
Robert L. Price
Registration No. 22,685

02/11/2002 150001 00000075 500417 08967826
01 FC:115 110.00 CH

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 RLP:ajb
Date: February 8, 2002
Facsimile: (202) 756-8087

RECEIVED
FEB 13 2002
TC 1700



Docket No.: 50179-026

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Kenneth J. MCNAUGHT, et al.

Serial No.: 08/967,826

Group Art Unit: 1302

Filed: November 12, 1997

Examiner: D. Brunsman

For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

RESPONSE TO OFFICIAL ACTION

Commissioner for Patents
Washington, DC 20231

Sir:

This is in response to the Official Action of October 9, 2001 in this application. In the action, double patenting rejections were made over certain claims of applicants' parent U.S. Patent 5,714,600. In particular, claims 24 and 25 were rejected under 35 USC 101 as claiming the same invention as that of claims 3 and 7 of prior U.S. Patent 5,714,600 ('600 patent). In addition, claims 11, 15 and 26 were rejected under the judicially created doctrine of obviousness type double patenting over claims 3, 4, 7 and 8 of U.S. Patent 5,714,600. Reconsideration of these rejections is requested.

The Examiner has apparently made these rejections based on a misinterpretation of the Certificate of Correction issued in the applicants' parent '600 patent. In fact, claims 1-8 do not exist in the parent '600 patent as those claims were cancelled prior to issuance of the patent. However, the Patent Office failed to enter the appropriate amendment so that the patent was printed including claims 1-8 which in fact had been cancelled. One copy of the Certificate of Correction issued for the parent patent is enclosed. In that Certificate of Correction, the Examiner will note that the Certificate states that claims 9-

#15
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RECEIVED
FEB 13 2002
TC 1700

08/967,826

11, 13-15, 24 and 25 of the application Serial No. 374,645 which issued as this patent had been cancelled. Accordingly, the final order of the claims in the '600 patent should be claims 16-29 which should be renumbered as claims 1-10. There is one error in the Certificate of Correction in that claim 17 should also be dependent on claim 1. The Certificate of Correction is somewhat confusing however because it refers to the original numbering of the claims from the pending application which subsequently became the '600 patent. Thus, application claim 16 is patent claim 9, application claim 17 is patent claim 10, and application claims 26-29 are claims 11-14 respectively, and application claims 20-23 are patent claims 15-18, respectively. Applicants will file a request for a further Certificate of Correction to clarify this matter.

Since all the double patenting rejections are based on the claims which were cancelled from the '600 patent, it is submitted that the rejection should be withdrawn and the claims found allowable.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY



Robert L. Price
Registration No. 22,685

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 RLP:ajb
Date: February 8, 2002
Facsimile: (202) 756-8087

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 5,714,600
DATED : February 3, 1998
INVENTOR(S) : Kenneth J. McNAUGHT et al

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

--Cancel claims 9-11, 13-15, 24 and 25--.

The Final Order of the claims should be:

1. 16
2. 17
3. 20 depends 1
4. 21 depends 2
5. 22 depends 1
6. 23 depends 1
7. 26 depends 2
8. 27 depends 7
9. 28 depends 8
10. 29 depends 9

Signed and Sealed this
Sixteenth Day of June, 1998



Attest:

Mary H. Green
Attesting Officer

Bruce Lehman
BRUCE LEHMAN

Commissioner of Patents and Trademarks

MF-16

| | | | |
|-------------------------------|------------------|-----------------|--|
| Notice of Allowability | Application No. | Applicant(s) | |
| | 08/967,826 | MCNAUGHT ET AL. | |
| | Examiner | Art Unit | |
| | David M Brunzman | 1755 | |

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's response filed 08 February 2002.
2. ☒ The allowed claim(s) is/are 11, 15 and 24-26.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/374,645.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(e)).
 - * Certified copies not received: _____
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☒ CORRECTED DRAWINGS must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No. 6.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(e)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.
9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

| | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ 6 <input type="checkbox"/> Examiner's Amendment/Comment 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9 <input type="checkbox"/> Other |
|--|--|

David M Brunzman
Primary Examiner
Art Unit: 1755

U.S. Patent and Trademark Office
PTO-37 (Rev. 04-01)

Notice of Allowability

Part of Paper No. 16.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20530
www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

20277 7590 02/16/2002
MCDERMOTT WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

EXAMINER

BRUNSMAN, DAVID M

ART UNIT

CLASS-SUBCLASS

1755

127-032000

DATE MAILED: 02/26/2002

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 08/967,826 | 11/12/1997 | KENNETH J. MCNAUGHT | 1451-007B | 7663 |

TITLE OF INVENTION: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

| TOTAL CLAIMS | APPLN. TYPE | SMALL ENTITY | ISSUE FEE | PUBLICATION FEE | TOTAL FEE(S) DUE | DATE DUE |
|--------------|----------------|--------------|-----------|-----------------|------------------|------------|
| 5 | nonprovisional | NO | \$1280 | \$0 | \$1280 | 05/28/2002 |

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above. If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

B. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and mail this form, together with applicable fee(s), to:

Box ISSUE FEE
Assistant Commissioner for Patents
Washington, D.C. 20231

MAILING INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

20277 7590 02/16/2002

MCDERMOTT WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

Note: The certificate of mailing below can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing.

Certificate of Mailing

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above on the date indicated below.

| |
|--------------------|
| (Depositor's name) |
| (Signature) |
| (Date) |

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 08/967,826 | 11/12/1997 | KENNETH J. MCNAUGHT | 1451-007B | 7663 |

TITLE OF INVENTION: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

| TOTAL CLAIMS | APPLN. TYPE | SMALL ENTITY | ISSUE FEE | PUBLICATION FEE | TOTAL FEE(S) DUE | DATE DUE |
|--------------|----------------|--------------|-----------|-----------------|------------------|------------|
| 5 | nonprovisional | NO | \$1280 | \$0 | \$1280 | 05/28/2002 |

| EXAMINER | ART UNIT | CLASS-SUBCLASS |
|-------------------|----------|----------------|
| BRUNSMAN, DAVID M | 1755 | 127-032000 |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). Use of PTO form(s) and Customer Number are recommended, but not required.

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" indication form PTO/SB/47) attached.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

| | |
|---|-------|
| 1 | _____ |
| 2 | _____ |
| 3 | _____ |

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent)

☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

☐ Issue Fee☐ Publication Fee☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

☐ A check in the amount of the fee(s) is enclosed.☐ Payment by credit card. Form PTO-2038 is attached.☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

The COMMISSIONER OF PATENTS AND TRADEMARKS is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending on the needs of the individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, United States Patent and Trademark Office, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND FEES AND THIS FORM TO: Box Issue Fee, Assistant Commissioner for Patents, Washington, D.C. 20231

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE(S)

PTOL-85 (REV. 07-01) Approved for use through 01/31/2004. OMB 0651-0033

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 ADDRESS: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20531
 www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 08/967,826 | 11/12/1997 | KENNETH J. MCNAUGHT | 1451-007B | 7663 |
| 20277 | 7190 | 02/26/2002 | EXAMINER | |
| BRUNSMAN, DAVID M | | | | |
| MCDERMOTT WILL & EMERY 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096 UNITED STATES | | | ART UNIT | PAPER NUMBER |
| | | | 1753 | |
| DATE MAILED: 02/26/2002 | | | | |

Determination of Patent Term Extension under 35 U.S.C. 154 (b)
 (application filed after June 7, 1995 but prior to May 29, 2000)

The patent term extension is 0 days. Any patent to issue from the above identified application will include an indication of the 0 day extension on the front page.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)



Docket No.: 50179-026

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Kenneth J. MCNAUGHT, et al.

Serial No.: 08/967,826

Filed: November 12, 1997

Group Art Unit: 1755

Allowed: February 26, 2002

Examiner: D. Brunsman

For: HIGH AMYLOSE STARCH AND RESISTANT STARCH FRACTIONS

LETTER SUBMITTING FORMAL DRAWINGS

Box Issue Fee
Commissioner for Patents
Washington, DC 20231

Sir:

In response to the Notice of Allowability dated February 26, 2002, submitted herewith are four (04) sheets of Formal Drawings in connection with the above referenced application.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

Robert L. Price
Robert L. Price
Registration No. 22,685

600 13th Street, N.W.
Washington, DC 20005-3096
(202)756-8000 RLP:blp
Facsimile: (202)756-8087
Date: May 13, 2002

6409840

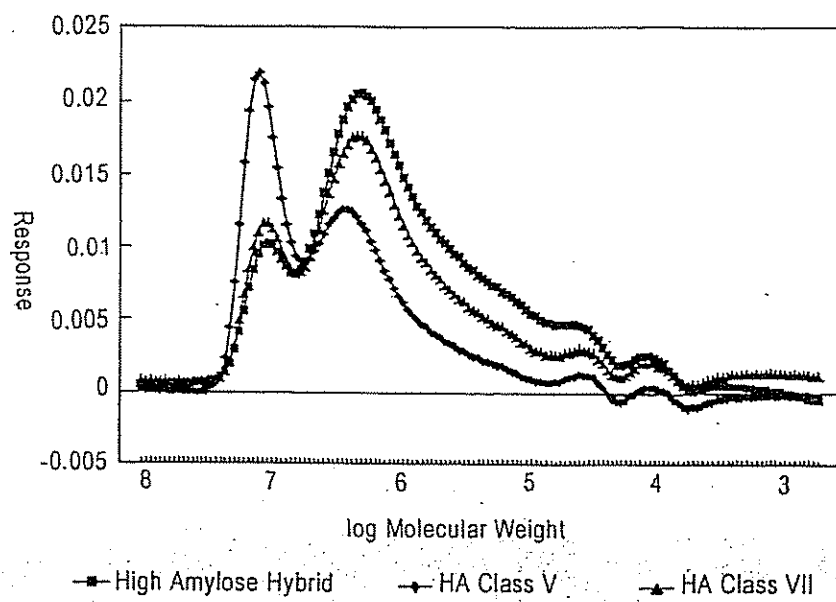


FIG. 1

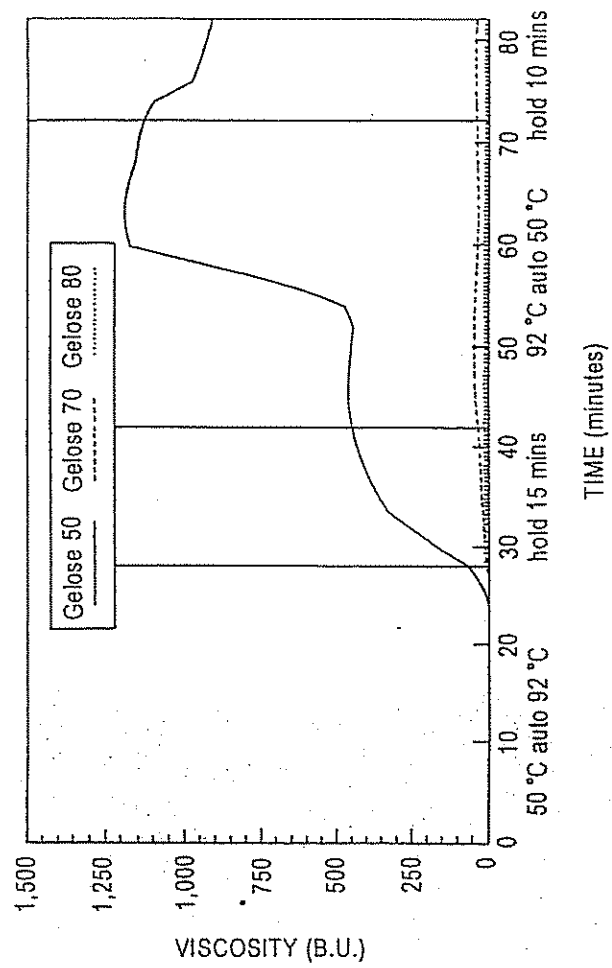


FIG. 2

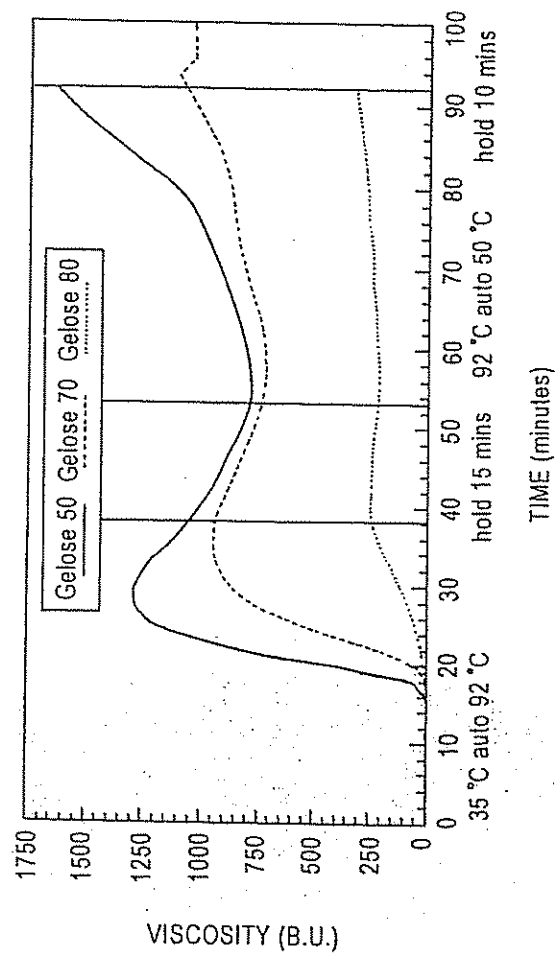


FIG. 3

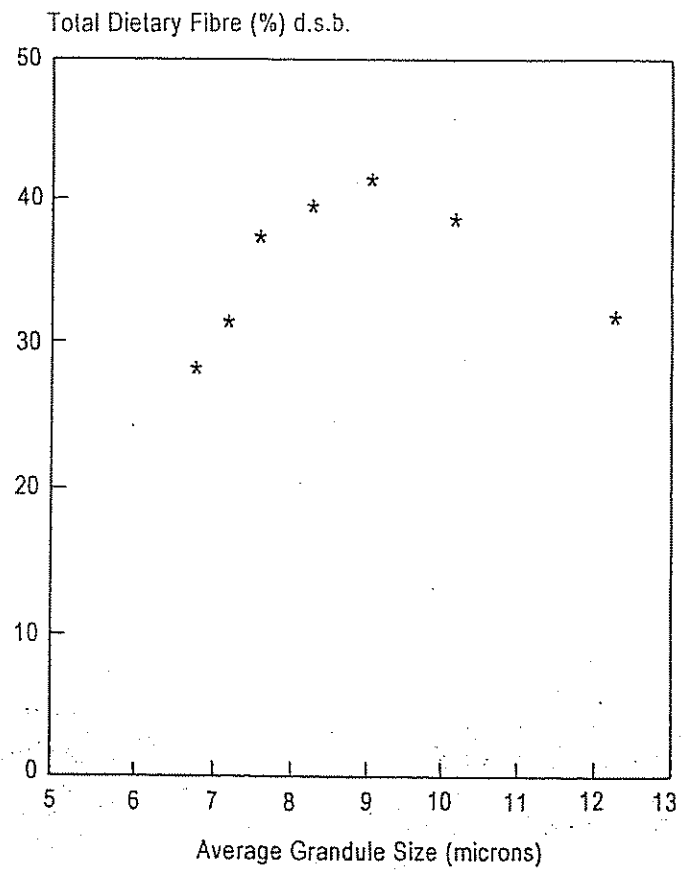


FIG. 4